

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

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| INTERNATIONAL BROTHERHOOD OF |) | |
| WORKERS, Local 1439, affiliated |) | |
| with AFL-CIO |) | |
| |) | |
| vs. |) | Public Case No. 79-044 |
| |) | |
| CITY OF PIEDMONT |) | |

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION**

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the International Brotherhood of Electrical Workers, Local 1439 challenging the eligibility of two City of Piedmont employees who voted in a certification election held on November 20, 1979. On January 9, 1980, a hearing was held in Cape Girardeau, Missouri at which representatives of Local 1439 and the City were present. Upon agreement by the parties, the case was heard by Chairman Berry who submitted the case by transcript to one employer member and one employee member of the Board. The State Board of Mediation is authorized to hear and decide issues concerning challenged election votes by virtue of 8 CSR 40-2.160(9).

At the hearing the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law:

FINDINGS OF FACT

The City of Piedmont employs six persons that are responsible for providing a wide range of services to approximately 2,500 residents of the area. Local 1439 contends that of the six above-mentioned employees, two must be considered

supervisors and are thus ineligible to vote in the certification election. The employees in question are John Stevenson and Loyd Brinkley; their positions and duties are described below.

John Stevenson serves a variety of functions for the City of Piedmont and has worked for the city for approximately 20 years. Presently Stevenson serves as the superintendent of utilities, water commissioner, and city treasurer. Stevenson generally works from seven to nine hours per day, five to six days a week, and is on call at all times. As water commissioner, Stevenson is responsible for the overall operation of the city water plant and must report directly to the Piedmont city officials. Stevenson usually begins his day by starting the city water pump in the morning to provide city residents water for the day. He sees that the equipment is in good working order and conducts turbidity and chlorination tests to insure water quality. As water commissioner Stevenson must also complete monthly written reports that are sent to various state agencies.

As superintendent of utilities Stevenson is responsible for the overall maintenance of the city streets, sidewalks and ditches, and oversees the repairing of blocked or damaged sewage lines. In the morning at the water plant, Stevenson decides what jobs need to be done and informs employee Brinkley who relays the work assignments to the other employees who report to work at the city shed some distance from the water plant. Stevenson periodically checks on the progress of the work but spends little time doing manual work at the job sites. As superintendent of utilities Stevenson is authorized to procure supplies and materials needed to maintain the city services.

As city treasurer Stevenson makes bank deposits in behalf of the city, keeps records of expenditures, and makes monthly reports to the city council. Being familiar with city expenses, Stevenson has participated in determining the city budget and has

on occasion participated in city council meetings at which employee salaries are discussed.

Stevenson is also involved in the hiring of city employees, although the process is somewhat informal. Most of the six employees have worked for the city for a number of years, beginning as employees under federal programs and, after the termination of the program, being hired by the city on a full time basis. Often Stevenson will recommend that a certain employee be hired or the mayor will ask Stevenson if a particular person should be employed. If there is a position available the mayor will usually follow Stevenson's recommendation. Stevenson also makes recommendations concerning employee pay increases and has served on the city council committee which determines employee salaries. The record shows that on at least two occasions Stevenson, at the request of a worker, has approached the mayor and city council recommending pay increases and was successful each time. Stevenson frankly admits that he is the only connection between the city council and the working crew. Often if an employee is unhappy about working conditions he will first consult Stevenson. Further, employees desiring time-off or a vacation will ask Stevenson who has the power to authorize such absences or vacations.

Lloyd Brinkley has been employed by the City for some 10 years, gradually accepting greater responsibilities over the years. Even though he has no official title, he is generally recognized as second in command behind Stevenson. Brinkley begins each day at the water plant and will start the water pump if he arrives before Stevenson. After a short discussion with Stevenson, Brinkley will go to the city shed and inform the other workers what jobs need to be done. At all times Brinkley is available to operate the city ambulance. Brinkley spends the majority of his time with the other crew members, assisting them with their tasks. When Stevenson is on vacation, Brinkley assumes many of Stevenson's responsibilities as described above.

All six Piedmont employees are entitled to the same medical care benefits, life insurance policies, and retirement funds. Stevenson receives approximately \$800 per month not including wages received as city treasurer, Brinkley receives \$722 per month, whereas the other employees are paid approximately \$533 per month.

CONCLUSIONS OF LAW

Local 1439 has challenged the eligibility of two City of Piedmont employees who voted in the certification election held on November 20, 1979. Local 1439 contends that the employees in question --- John Stevenson and Loyd Brinkley --- are supervisors that must be excluded from the bargaining unit comprised of the rank and file Piedmont employees and are therefore ineligible to vote in the election. The City, however, argues that neither Stevenson nor Brinkley has the supervisory authority that would necessitate their exclusion from the bargaining unit and make them ineligible to vote.

The Board has consistently held that supervisors cannot be included in the same bargaining unit as the employees they supervise. St. Louis Fire Fighters Association, Local 73, IAFF, AFL-CIO vs. City of St. Louis, Missouri, Public Case No. 76-013. Consequently, if the employees in question are in fact supervisors they are ineligible to vote in the certification election. Therefore, in order to determine the worker's eligibility, the Board must decide whether the workers are in fact supervisors. The Board recently reiterated the factors considered in determining whether an employee is a supervisor in St. Charles Professional Fire Fighters, Local 1921, IAFF vs. City of St. Charles, Public Case No. 79-024. Those factors are:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees.
2. The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters.

3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees.
4. The level of pay including a valuation of whether the supervisor is paid for his skill or for his supervision of employees.
5. Whether the supervisor is primarily supervising an activity or primarily supervising employees.
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.

A consideration of these factors as applicable to the facts of this case is set out below.

Applying the above factors, there is no question that employee Stevenson is indeed a supervisor and is thus ineligible to vote in the certification election. The City contends that because Stevenson lacks the power to hire or fire city employees he is not a supervisor. However, the issue is not whether Stevenson has the authority to hire or discharge employees but it is whether Stevenson has the authority to effectively recommend such actions. Admittedly, the ultimate authority to hire and discharge employees rests with the mayor and city council. Nevertheless, it is clear that Stevenson is often consulted as to whether an employee should be retained. Also, Stevenson recommends that certain employees be given pay increases. Given Stevenson's many years of experience in such matters, we must assume that his recommendations are given much weight and are effective.

The City further contends that Stevenson lacks the authority to direct and assign the work force. We disagree. The record clearly demonstrates that Stevenson exercises independent judgment when deciding what jobs need to be done and directs his crew members accordingly without consulting the city officials. Therefore, we must conclude that Stevenson has the authority to direct and assign the work force in a supervisory capacity. The City also argues that the fact that Stevenson often works holidays and weekends suggests that he is not a supervisor. Although Stevenson does work on said occasions, the fact remains that the majority of his time is spent supervising the employees and not working alongside the rank and file city employees.

Further, it is clear that Stevenson is the highest paid city employee and that he exercises more authority than any other worker. Consequently, we must conclude that Stevenson is a supervisor that must be excluded from the bargaining unit of other city employees and is thus ineligible to vote in the certification election.

As to the status of employee Brinkley, the evidence adduced at the hearing is not sufficient to convince the Board that Brinkley is a true supervisor. Although Brinkley is second in command and assumes many of Stevenson's responsibilities when the latter is on vacation, such temporary authority is not sufficient to grant supervisory status to an employee. The record lacks any evidence that Brinkley has the authority to effectively recommend the hiring, discharge, or promotion of city employees. Further Brinkley exercises no independent judgment in assigning work duties to employees in that Brinkley merely relays said information from Stevenson to the members of the crew. Further, the record indicates that Brinkley spends a majority of his time working alongside the other workers or driving the ambulance. Consequently, the Board must conclude that Brinkley's position is more akin to that of a working foreman than that of a supervisor and is thus included in the bargaining unit of the other city employees and is therefore eligible to vote in the certification election.

DECISION

It is the decision of the Board that employee Stevenson is ineligible to vote and that his ballot shall be destroyed accordingly. Further, employee Brinkley is declared an eligible voter. However, the results of the election, not including Brinkley's vote, was three votes for Local 1439 and one against. Therefore, Brinkley's vote could in no way defeat the union's majority. Consequently, the Board deems it unnecessary to open Brinkley's ballot and thus recognizes that Local 1439 received a majority of votes in the certification election held on November 20, 1979. The Board's certification shall be issued forthwith.

Entered this 31st day of March, 1980.

MISSOURI STATE BOARD OF MEDIATION

(SEAL)

/s/ Conrad L. Berry
Conrad L. Berry, Chairman

/s/ Robert Missey
Robert Missey, Employee Member

/s/ Herbert Shaw
Herbert Shaw, Employer Member